

Working with Conflict in Child Custody Mediation

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Learning Goals

1. Learn about the history of mandatory custody mediation.
2. Describe the process of custody mediation.
3. List the presenting issues in custody mediation.
4. Identify the ways in which conflict is addressed in custody mediation.

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How it all began...

- ▶ History
- ▶ G.S. 50-131, 7A-494
- ▶ Mandatory process
- ▶ Waiver

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Custody Mediation in North Carolina

- ▶ 100 counties
- ▶ 30 Judicial Districts
- ▶ 51 Child Custody Mediators
- ▶ Distribution of mediators varies



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Custody Mediation Orientation

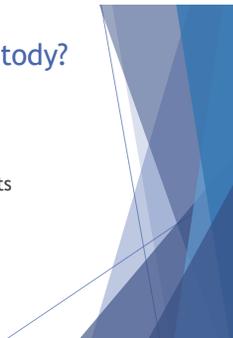
- ▶ Mandatory
- ▶ Class setting
- ▶ Length
- ▶ Option for long distance
- ▶ Preparation for mediation



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Who files for child custody?

- ▶ Never married parents
- ▶ Divorcing parents
- ▶ Same sex and heterosexual parents
- ▶ Extended family members
- ▶ Family friends



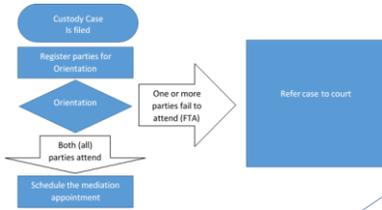
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Use of Interpreters

- ▶ Professionally trained
- ▶ Paid by AOC
- ▶ Over 100 spoken languages
- ▶ Deaf and hard of hearing
- ▶ Assist with orientation and mediation

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Mediation Process - Orientation



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Mediation vs. Court

Private and confidential

vs.

Public and on the record

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Mediation vs. Court

Informal Conversation

Vs.

Formal Proceeding



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Mediation vs. Court

Collaborative, cooperative

vs.

Adversarial, competitive



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Mediation vs. Court

Planning, future focus

vs.

Past, fact finding focus



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Mediation vs. Court

Quick

vs.

Lengthy wait



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Mediation vs. Court

Direct communication =
less stress for parents and children

vs.

No direct communication =
greater stress for parents and children



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Mediation vs. Court

Free!!!

Vs.

Potentially very expensive



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Mediation vs. Court

Self determination -
Parents decide

Vs.

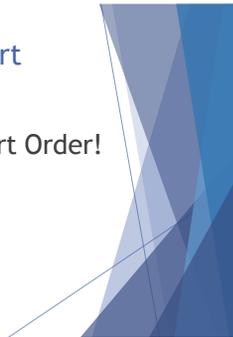
Judge decides



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Mediation and Court

Legally enforceable Court Order!



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Qualifications of Mediators

- ▶ Master's degree human services field
- ▶ Professional Training/Experience: child development, family dynamics, etc.



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On the Job Training

- ▶ 40 hours classroom
- ▶ 24 hours mediation observation
- ▶ 12 hours co-mediating
- ▶ 18 Hours court observation



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Role of Mediator

- ▶ Facilitate and moderate
- ▶ Assess safety
- ▶ Maintain neutrality
- ▶ Educate/Consult
- ▶ Monitor/terminate



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Presenting Issues in Mediation

- ▶ Substance Abuse
- ▶ Addiction
- ▶ Mental Health
- ▶ Domestic Violence



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Addressing Domestic Violence in Custody Mediation

- ▶ Ex Parte and DVPO
- ▶ Partner Abuse
- ▶ Child Abuse



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Legal Charges Misdemeanors and Felonies

- ▶ DWIs
- ▶ Drug possession/trafficking
- ▶ Assaults
- ▶ Forgery
- ▶ Larceny



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Financial/Physical Support

- ▶ Child support
- ▶ Household expenses
- ▶ Caregiving



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Parent Withholds Child



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Managing the session

*The mediator shall be in control at all times of the mediation process and the procedures to be followed in the mediation. The mediator may suspend the mediation session if it becomes unsafe for any of the participants, including the mediator.**

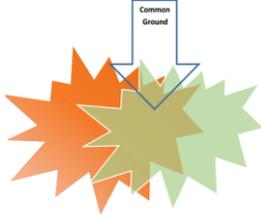
- North Carolina Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes

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Self-determination is the cornerstone of the mediation process!

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Finding Common Ground



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Strategies for Managing Mediation

- ▶ Set and enforce ground rules
- ▶ Assess and monitor safety considerations
- ▶ Model healthy, productive communication
- ▶ Share observations
- ▶ Explore issues and concerns
- ▶ Facilitate an exchange of information and ideas

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Strategies

- ▶ Identify common ground
- ▶ Keep the focus on the best interests of the children
- ▶ Moderate - keep the discussion on the road, not in the weeds
- ▶ Conclude the session

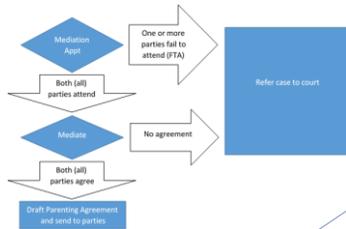
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Secondary Goals of Mediation

- ▶ Address and try to reduce any acrimony that exists between the parties
- ▶ Encourage appropriate co parenting
- ▶ Help establish productive boundaries
- ▶ Make referrals and encourage consultation with independent experts (therapists) when appropriate (and return to mediation with this information when productive)
- ▶ Educate parents regarding parenting and child development issues
- ▶ Help to reduce further litigation

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Mediation Process - Session



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Ingredients of Parenting Agreement

- ▶ Schedule (regular and holiday)
- ▶ Decision Making
- ▶ Communication
- ▶ Parties are not required to reach agreement

*No financial issues as per statute

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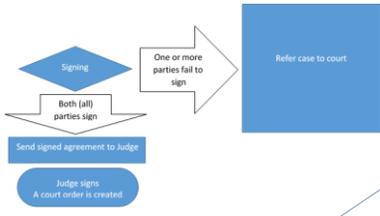
Outcomes in Mediation

- ▶ Agreement - Temporary or Permanent
- ▶ 2nd Voluntary session
- ▶ No resolution - agreement
- ▶ Try again



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Mediation Process - Finalizing Agreement



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Lessons Learned



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Two perspectives of custody conflict -

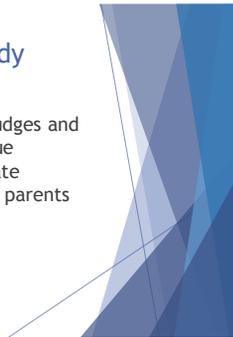
- ▶ Legal purview
- ▶ Social purview



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Two perspectives of custody conflict -

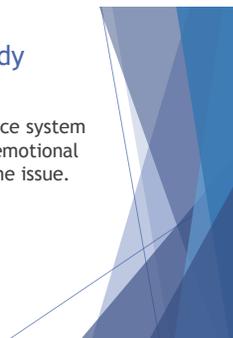
Legal purview of judicial system (Judges and lawyers) - rational resolution to issue presented by parenting from separate households including and especially parents in deep-seated, ongoing conflict.



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Two perspectives of custody conflict -

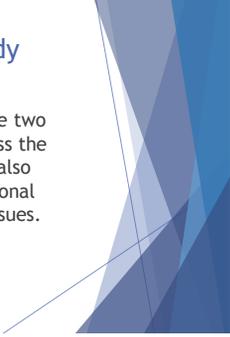
- ▶ Social purview of the human service system (social workers and therapists) - emotional and relational support for the same issue.



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Two perspectives of custody conflict -

Good custody mediators bridge these two perspectives, helping parents address the legal/rational issues of custody but also helping to navigate the social/relational issues and mitigate the emotional issues.



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Intervening in a Conflict

- ▶ There is an initial conflict “state” of the relationship and the issue.
- ▶ Perceived opposition, incompatibility, or misalignment of requirements, values, and/or interests of the parties.



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Mediation is an Intervention

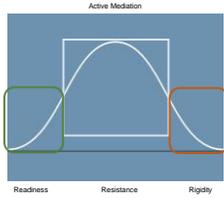
To be able to intervene we must attempt to address how the participants think about the conflict (not each other).



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Range of Conflict

Each of the participants comes to mediation with some degree of either readiness or rigidity in terms of seeking a resolution.



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Organizing the Conflict

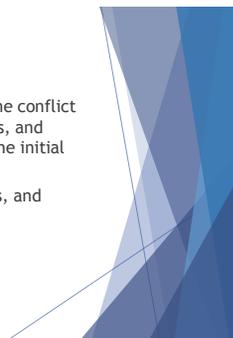
- ▶ Probe
- ▶ Sort
- ▶ Shape
- ▶ Frame
- ▶ Explore
- ▶ Develop
- ▶ Test



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Probe the Conflict Space

- ▶ Develop a nuanced understanding of the conflict (deep goals and motivations, responses, and concerns) by observing and assessing the initial conflict "space."
- ▶ Examine participant goals, motivations, and concerns.



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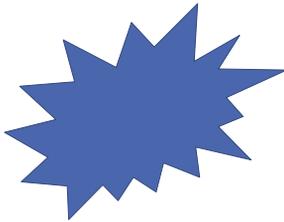
Probe the Conflict Space

- ▶ Explore conflict in regard to the nature of the relationship between parties, focusing on psychological and emotional dimensions including relationship dynamic, issues of power and control, grievances.



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Undifferentiated Conflict Space



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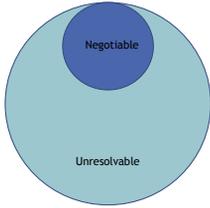
Sort Issues

- ▶ Discover which parts of the conflict space are more fixed and thus less amenable to mediation and any areas where there may be more negotiation potential and possibility of conflict resolution.
- ▶ Verbally and conceptually “sort” issues into the unresolvable (in mediation) and negotiable in terms of what is negotiable and appropriate for mediation and what is not.



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Negotiable and Unresolvable



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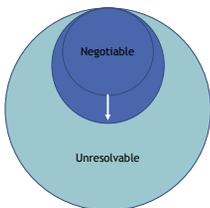
Shape the Intervention

- ▶ Expand the negotiation space to improve the potential for resolution.
- ▶ Emphasize areas of overlap or alignment
- ▶ Clarify negotiable issues.



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Expanded Negotiation Space



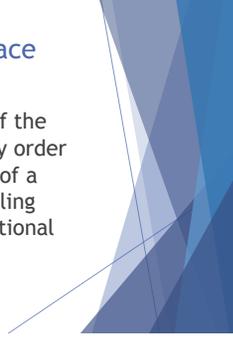
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Frame the Negotiation Space

Frame the resolution in terms of the legal requirements for a custody order while including a consideration of a “rough draft” road map for settling elements of the emotional/relational conflict.



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Explore the Resolution Space

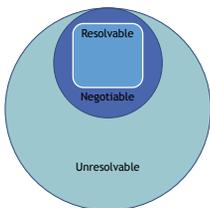
- ▶ Discussing mutually acceptable and feasible options for addressing essential elements of PA as well as underlying aspects of the emotional/relational conflict.
- ▶ Involves building options and narrowing negotiation “distance.”



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Resolution Space



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Develop the Resolution Space

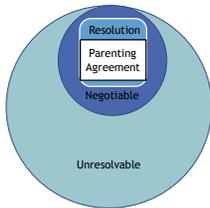
- ▶ Facilitate agreement on essential elements of PA as well as any additional issues.
- ▶ Test commitment to agreement.



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Parenting Agreement



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How do we do it?

Resolution barriers

- ▶ Totalizing - all or nothing thinking
- ▶ Principles - good, bad, absolutes
- ▶ Skewed expectations
- ▶ Emotional thinking



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Create a Facilitative Context

- ▶ Creating a solutions orientation
- ▶ Displaying genuine curiosity
- ▶ Being authentic
- ▶ Juxtapose resolution scenarios



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Challenging the Conflict Framework

- ▶ Test and provoke - Lean in, stir up, arouse, surface conflict
 - ▶ Narratives
 - ▶ Emotions
 - ▶ Expectations



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Challenging the Conflict Framework

- ▶ Reframe - Create movement by “editing” the conversation
 - ▶ Decode messages
 - ▶ Direct from competition toward cooperativeness
 - ▶ Simplify complex issues
 - ▶ Move from certainty to uncertainty



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Challenging the Conflict Framework

- ▶ Establish a temporal milestone - Offer a new ending
 - ▶ That was then...
 - ▶ Focus on future
 - ▶ Balance realism with optimism



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Affect Labeling and Management

- ▶ Participants often “vent” strong emotions
- ▶ Usually there is no reflection or processing
- ▶ Affect labeling has been shown to diminish emotional reactivity
- ▶ Mediator can make an implicit process more explicit by naming observed emotions



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Psychological Justice

A common way that people in custody mediation think about their conflict.



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Psychological Justice

- ▶ Justice motivation - a belief that people should get what is fair, what they deserve, and a commitment to that goal.
- ▶ One party (or both) believes they were *wronged* (or are being wronged) - that they were on the receiving end of some kind of treatment or behavior by the other that they don't believe they deserved - and so they feel aggrieved.



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Psychological Justice

- ▶ Two dimensions of justice motivation as applied to custody mediation are:
 - ▶ *Distributive justice*
 - ▶ *Interpersonal justice*



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Psychological Justice

- Distributive justice
 - ▶ Perceptions of fairness related to the distribution of outcomes, i.e.
 - ▶ time with child/children,
 - ▶ responsibilities,
 - ▶ expenses.



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Psychological Justice

Interpersonal justice

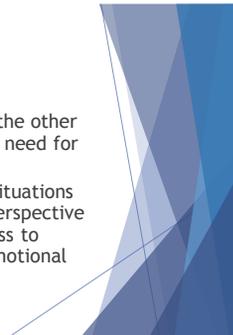
- ▶ Perceptions of the other parent’s conduct, in terms of being respectful, i.e. a parent perceives him/herself as being treated in a disrespectful manner, not being recognized as a “real” parent. (power and control)
- ▶ Perceptions of the other parent’s conduct as placing undue burdens on the aggrieved parent.



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Psychological Justice

- ▶ When someone feels wronged by the other parent, they often demonstrate a need for a kind of justice.
- ▶ Justice is about balance. These situations often involve a social exchange perspective - wanting to exchange a willingness to cooperate for an effort toward emotional restitution.



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Psychological Justice

The aggrieved party wants the other person to indicate that they:

- ▶ have heard and understand the emotional cost of their behaviors
- ▶ will take responsibility
- ▶ express regret
- ▶ make amends - in the context of the mediation, make concessions.

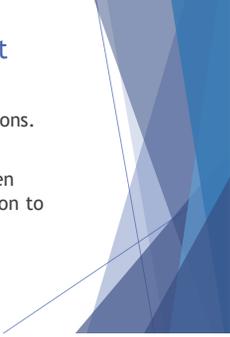


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Hidden Benefits of Conflict

Conflict often has negative associations.

However, sometimes there are hidden benefits that can provide a motivation to remain in the conflict.



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Benefits of Conflict

The conflict is something known and familiar.

- ▶ For some people the underlying emotional impact of the conflict may seem perversely comfortable.
- ▶ The dynamic of conflict feels recognizable and produces a destructive familiarity.
- ▶ Creates the basis for an ongoing relationship, often with a similar level of emotional intensity.



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Benefits of Conflict

The conflict can provide a sense of meaning or importance.

- ▶ Conflict generated anger can provide a temporary boost to ego - a way to feel powerful in the moment.
- ▶ It can serve to simplify the roles and relationship in a way that makes them more understandable.
- ▶ It can help people feel in control because the conflict feeds a important fitting narrative.



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Benefits of Conflict

The conflict can be a distraction.

- ▶ The conflict can help distract from underlying uncomfortable feelings of fear and / or grief.
- ▶ Focusing on the conflict can divert the attention from serious underlying issues or problems.

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Benefits of Conflict

Biological dimensions of the emotional response to conflict can be addicting.

- ▶ The dopamine released when people are angry can result in a kind of "high" (drugs that flood the brain with dopamine, or inhibit its reuptake, include cocaine and methamphetamines).
- ▶ Increased amounts of dopamine can cause euphoria - it feeds the feel good parts of the brain.
- ▶ The addictive aspects of conflict can cause people to continually reengage in the conflict.

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We are never so vulnerable as when we love, and never so hopelessly unhappy as when we lose the object of our love.
- Sigmund Freud.

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THANK YOU!



